CHAPTER 3: OCEAN JURISDICTION & MANAGEMENT

OCEAN JURISDICTION AND MANAGEMENT

The waters along and off the California coast include a complex array of local, State, federal, and international jurisdictions, including State Tidelands and Submerged Lands (State Tidelands), the Outer Continental Shelf, the territorial sea, the contiguous zone, the exclusive economic zone and high seas. The jurisdictions are used to describe areas of offshore ownership, sovereignty, various forms of mineral, fishery, and national security rights, or regulatory controls. State Tidelands are owned, managed and regulated by California. However, the State's ability to control or benefit from the resources or uses beyond State Tidelands are frequently unclear under existing law and practice. The federal government has authority in the waters beyond State Tidelands, but this authority can be limited by international regimes.

OCEAN JURISDICTIONAL DESIGNATIONS

Ocean jurisdictions include some offshore regions with clearly defined sovereignty and regulatory regimes, while others have become less clear due to recent national and international developments (see Figure 3-1). Current ocean jurisdictional designations offshore California are:

- ***State Tidelands and Submerged Lands (mean high tide line to 3 nautical miles offshore):*** the Federal Submerged Lands Act of 1953 (43 U.S.C. 1301 et seq.) granted ownership of lands and resources within this body of water to coastal states such as California. This authority provides for State control and regulation of the development of resources such as oil and gas, and fisheries within this area.

- ***Outer Continental Shelf (seaward of 3 nautical miles from shore):*** the Outer Continental Shelf Lands Act of 1953 (43 U.S.C.A. 1331 et seq.), passed in coordination with the Submerged Lands Act, confirmed federal jurisdiction over the resources beyond three nautical miles from shore and created a legal process for developing those resources. The federal government program for leasing and developing Outer Continental Shelf oil and gas resources is one example of the exercise of this authority.

- ***Territorial Sea (shoreline to 12 nautical miles offshore):*** pursuant to a 1988 proclamation by President Reagan (Proclamation No. 5928), the United States now asserts sovereign rights over the lands and waters out to 12 nautical miles from shore (the previous territorial sea designation was coextensive with State Tidelands in California). This proclamation does not disturb the rights of states in the waters out to three nautical miles established under the Submerged Lands Act. However, the term "territorial sea" is used in over 68 federal statutes and the new assertion of sovereignty creates ambiguity over the management of the area between 3 and 12 miles offshore. It has never been tested in the courts as to whether the President can unilaterally enlarge this jurisdiction to 12 miles for the purposes of these statutes. Generally, the territorial sea (sometimes referred to as the “Marginal Sea”), is part of the national territory, but foreign ships enjoy a right of “innocent passage” through the territorial sea. Within the territorial sea, the federal government can enforce laws relating to such matters as navigation, customs and quarantine.

- ***Contiguous Zone (12 to 24 nautical miles offshore):*** within this area, a nation can exercise control over customs, fiscal, immigration and sanitary matters. The United States adopted and recognized a 12-mile contiguous zone with the U.S. Senate’s ratification of the 1958 Convention on the Territorial Sea and Contiguous Zone (the same procedure followed for formal approval of a treaty). Although international treaties allow coastal nations to establish contiguous zones out to 24 miles, the United States has not done so because it has not ratified those treaties.

- ***Exclusive Economic Zone (3 nautical miles to 200 miles offshore):*** pursuant to a 1983 proclamation by President Reagan (Proclamation No. 5030), the United States now asserts jurisdiction over the living and non-living resources within the exclusive economic zone (EEZ). While coastal states have primary jurisdiction and control over the first three miles of the EEZ and the federal government has primary jurisdiction over and controls the remaining 197 miles, the Coastal Zone Management Act provides coastal states with substantial authority to influence federal actions beyond three nautical miles. The assertion of jurisdiction under the EEZ provides a basis for U.S. economic exploration and exploitation, scientific research, and environmental protection.

- ***High Seas (beyond 12 nautical miles from shore):*** this designation includes all portions of the sea not included in the territorial sea of any nation. High seas are partially co-extensive with the contiguous zone (not formally adopted in the U.S.) and the EEZ. The primary characteristic of high seas is a nation's right to freely navigate its vessels (including war vessels) within this area.

JURISDICTIONAL HISTORY

Debate over who controls and manages the waters and resources found offshore the United States began in the late 1700's and continues to this day. Issues in this debate include key federal and State relationships which must be better understood for effective management of California's ocean resources.

Soon after the founding of the United States, the newly formed federal government asserted sovereignty over a territorial sea extending three miles from the coast. Moreover, the coastal states asserted the ability to develop ocean resources out to three miles. Over the past 45 years, however, a number of events have occurred which drastically modified management of the offshore area. In 1947, the United States Supreme Court upset what had appeared to be settled law and determined that the United States, rather than coastal states, had paramount rights over the nation's coastal waters and resources [United States v. California, 332 U.S. 19 (1947)]. This decision was surprising to coastal states, and set the stage for a debate resulting in the enactment of the Submerged Lands Act of 1953 (granting coastal states ownership of the lands and resources out to three nautical miles from shore). Also enacted was the Outer Continental Shelf Lands Act of 1953, establishing federal jurisdiction over the resources beyond three nautical miles from shore and creating a legal process for developing those resources.

In the early 1970's, Congress recognized that activities beyond states' control and jurisdiction could significantly affect coastal states. Congress enacted the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 et seq.) in 1972, providing a crucial link between coastal states and federal activities, or federally permitted activities, which occur just beyond state waters. As an incentive for states to develop management plans for their coastal resources, the Congress granted states the ability to review, and in some circumstances stop, federally permitted activities which "affect" the resources of the coastal zone, if those activities are not consistent with the federally-approved state coastal program. However, the CZMA allows the U.S. Department of Commerce to override a state's objection to a federal permit activity if the Secretary for Commerce finds that the objection is not supported by the objectives of the CZMA.

The California Coastal Act of 1976 (Coastal Act; PRC Section 30000 et seq.) is one of the most comprehensive coastal management statutes in the country. In 1977, for purposes of the CZMA, the federal government certified the open coast segment (that is, the policies of the Coastal Act, which addresses all portions of the coast except San Francisco Bay) of California's Coastal Management Program (CCMP). This certification was not in effect until 1978, following an unsuccessful legal challenge by the Western Oil and Gas Association. The McAteer-Petris Act (Government Code Section 66000 et seq.) created the San Francisco Bay Conservation and Development Commission, which administers an equally comprehensive program for the San Francisco Bay segment of the CCMP, and was also certified in 1978. Both programs differ substantially from most environmental laws because they consider a broad array of coastal resource concerns, such as public access, recreation, coastal-dependent commerce and industry (including port expansion and energy development), agriculture, wetlands, water

quality, marine resources and environmentally sensitive habitats within the coastal zone. A third agency implementing part of the CCMP, the State Coastal Conservancy, complements the planning and regulatory activities of its sister agencies through its coastal land acquisition and resource restoration and enhancement programs. California has extensively and effectively used the federal consistency review authority conferred by the CZMA to review federal activities and federally-permitted activities. This allows California to negotiate with federal agencies to ensure that projects affecting the coastal zone -- most significantly Outer Continental Shelf (OCS) oil and gas projects -- are consistent with the CCMP.

Recent developments in U.S. coastal management are closely related to developments in international law. International conventions addressing the territorial sea and continental shelf have recognized that coastal nations can exert jurisdiction and authority over resources far from the coast. In 1976, acknowledging the national interest of establishing sound management practices for fishery resources within a 200-mile zone, the Congress passed the Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. 1801 et seq.). Passage of the Magnuson Act was the first unilateral declaration of jurisdiction over a 200-mile zone by a major power.

The United States followed other nations when, on March 10, 1983, President Reagan established by proclamation an EEZ for the United States. The President expanded upon the Magnuson Act's declaration of jurisdiction by declaring sovereign rights over all living and non-living resources, subject to certain limitations, within 200 miles of the United States' shoreline. The Congress confirmed presidential designation of the EEZ in 1986 amendments to the Magnuson Act (16 U.S.C. 1802 [6]). The EEZ does not include and is not intended to address activities within State Tidelands, although the Magnuson Act can substantially affect fisheries management in these waters. If the Secretary of Commerce determines that a state is taking actions in state waters which are adverse to a fishery regulated under the Magnuson Act, the Secretary can intervene and regulate that fishery in state waters (16 U.S.C. 1856 [b]). In fact, the Secretary may be compelled to act in the event that a fishery in state waters is not receiving adequate protection. For example, in Southeastern Fisheries Ass'n Inc. v. Mosbacher, 773 F.Supp. 435 (D.D.C. 1991), the court found that the Secretary of Commerce had acted improperly by failing to supersede state laws concerning a fishery.

In a December 27, 1988 proclamation, President Reagan extended the seaward limit of the United States' territorial sea from 3 to 12 nautical miles from shore for purposes of international law. The proclamation stated that "[n]othing in this proclamation (a) extends or otherwise alters existing Federal or state law or any jurisdiction, rights, legal interests, or obligations derived therefrom,..." Because it is unclear whether such limiting language is effective in the context of a presidential extension of the territorial sea, this language created questions concerning future regulation and ownership of the area between 3 and 12 miles from shore. To date, the Congress has not acted to confirm the proclamation thus creating considerable ambiguity over the applicability of domestic laws in the area between 3 and 12 miles offshore. This is significant because the term "territorial sea" is used in approximately 68 different federal statutes.

An example of this ambiguity involves the Federal Aviation Administration (FAA). Flight rules for aircraft are divided into domestic rules which apply over the territorial sea, and international rules which apply over the high seas. Technically, because President Reagan's proclamation limited its application to the international arena, the practical effect was a nine-mile wide zone where neither international or domestic rules applied. This nine-mile zone lies between international waters 12 miles from shore and the former territorial sea boundary 3 miles from shore. Notwithstanding the limitation in the proclamation, the FAA amended its domestic flight rules, making them applicable to 12 miles.

STATE MARINE RESOURCE MANAGEMENT AGENCIES

Ocean management in California is addressed by three "super agencies" and their respective boards, departments, commissions and conservancies (collectively referred to as "departments"). These super agencies are the Resources Agency, California Environmental Protection Agency, and Health and Welfare

Agency. Under each agency, and within each of the sibling departments, a host of mandates, laws, regulations, and management activities provide protection and management of marine resources. Ocean management responsibilities for these agencies and their departments are provided in more detail in Appendix C.

Resources Agency of California

The Resources Agency of California is a cabinet-level agency created in a 1961 reorganization of California State government. The Resources Agency oversees and coordinates the activities and administration of 18 departments, all relating to the preservation, management and enhancement of California's natural and cultural resources, including land, wildlife, water, timber, and minerals.

Assembly Bill 205 (Chapter 1027, Stats.1991) transferred to the Resources Agency all executive branch delegations regarding review and coordination of federal Outer Continental Shelf (OCS) oil and gas lease sales and development projects, policy coordination of resources and uses in the EEZ, State representation to the Coastal States Organization and the Department of the Interior's OCS Policy Committee, and participation in other ocean and coastal resource issues. Those departments within the Resources Agency with some authority over, or whose actions can affect the management of ocean and coastal resources include the:

- *California Coastal Commission*
- *Department of Boating and Waterways*
- *Department of Conservation*
- *Department of Fish and Game*
- *Department of Forestry and Fire Protection*
- *Department of Parks and Recreation*
- *Department of Water Resources*
- *Energy Resources, Conservation and Development Commission*
- *Office of Oil Spill Prevention and Response*
- *San Francisco Bay Conservation and Development Commission*
- *State Coastal Conservancy*
- *State Lands Commission*

California Environmental Protection Agency

The California Environmental Protection Agency (CalEPA), a cabinet-level agency created in a 1991 reorganization of State government, coordinates the policies and activities of various boards and commissions under its purview. While authority to manage the majority of ocean management issues rests with the Resources Agency, CalEPA oversees the development of ocean water quality standards and the regulation of waste discharges. These responsibilities reside within the:

- *State Water Resources Control Board*
- *Regional Water Quality Control Boards*
- *Office of Environmental Health Hazard Assessment*

California Health and Welfare Agency

The California Health and Welfare Agency, created in 1961, is a cabinet-level agency which administers state and federal programs for health care, social services, public assistance and job training. The majority of this agency's activities do not specifically address ocean issues, yet it plays a critical role in protecting public health as it relates to the safety of marine waters, bathing beaches, and seafood consumption.

These responsibilities reside within the:

- *Department of Health Services*

FEDERAL MARINE RESOURCE MANAGEMENT AGENCIES

Federal jurisdiction over ocean resources is divided among seven large departments, including the Departments of Agriculture, Commerce, Defense, the Interior, and Transportation; the Food and Drug Administration; and the U.S. Environmental Protection Agency. Because these departments are large and their mandates in the marine environment are extensive, a summary of their roles in ocean resource management is included here, while more detail is provided in Appendix D.

U.S. Department of Agriculture

The Department of Agriculture promotes the conservation of soil, water, and related resources. Housed within the Department of Agriculture is the Natural Resources Conservation Service (NRCS; previously known as the Soil Conservation Service), established under the authority of the Soil Conservation Act of 1935 (PL 74-46). The NRCS provides technical and financial assistance to farmers, ranchers, and state and local governments to reduce soil erosion and sedimentation, prevent flood damages, conserve water and improve water quality, reduce energy requirements, and assure agricultural productivity. The NRCS plays an important role in the inland watershed zone by helping to reduce erosion and the related adverse impacts to California's enclosed waters and nearshore ocean resource zones.

U.S. Department of Commerce

The National Oceanic and Atmospheric Administration (NOAA) is the federal agency with the greatest authority and expertise on issues related to the coasts and oceans. The NOAA was formed on October 3, 1970 and is located within the Department of Commerce. The Agency is dedicated to long-term stewardship of the Earth's marine and air resources, with a mission to observe, describe, and predict the natural variability of the global Earth system, including the ocean, the atmosphere, and features of the solid Earth and near-space environment, and to detect any changes in the Earth system caused by human activity.

General responsibilities include conservation of marine living resources and protected species, and associated services to the fishing industry; oversight of atmospheric and hydrological resources; marine environmental assessment, management, and resource restoration; production of comprehensive environmental science data; and leadership in research and education in the earth sciences to serve the economy. The five major divisions within the NOAA are the:

- *National Environmental Satellite, Data and Information Service*
- *National Marine Fisheries Service*
- *National Ocean Service*
- *National Weather Service*
- *Office of Oceanic and Atmospheric Research*

The Office of Ocean and Coastal Resource Management within the NOAA’s National Ocean Service administers two key laws: the Coastal Zone Management Act and the Marine Protection, Resource, and Sanctuaries Act. The NOAA’s National Marine Fisheries Service administers the Magnuson Fisheries Conservation Act and the Marine Mammal Protection Act.

U.S. Department of Defense

The Department of Defense (DOD) owns property along the coast, requiring that any activities offshore those properties be consistent with military operations, and oversees activities of the U.S. Army Corps of Engineers (Corps). Under authority of the Rivers and Harbors Act, Section 404 of the Clean Waters Act, and the Marine Protection, Research and Sanctuaries Act (MPRSA or Ocean Dumping Act), the Corps develops, controls, maintains, and conserves the nation's navigable waters and wetlands. The Corps regulates development of any project involving fill, construction, or modification of waters of the United States. For example, pursuant to Section 103 of the MPRSA the Corps is authorized to permit disposal of dredged material into the ocean, if the Corps determines that "the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environments, ecological systems, or economic potentialities." However, the Corps is prohibited from issuing such a permit if the Environmental Protection Agency finds that the proposal cannot meet its criteria established for disposal site selection pursuant to Section 102 of the MPRSA.

U.S. Department of the Interior

The Department of the Interior (DOI) supervises a broad range of management activities regarding federal land, wildlife, mining, water, and energy resources. The Department's ocean management responsibilities include the assessment and safe development of mineral resources (including the administration of oil and gas resources located on the OCS), stewardship of National Parks along the coast, study and protection of several marine species, development of water conservation plans and improved understanding of ocean and coastal geological processes. The DOI bureaus that manage resources or conduct activities which potentially affect ocean and coastal resources are the:

- *National Park Service*
- *U.S. Biological Service*
- *U.S. Bureau of Reclamation*
- *U.S. Fish and Wildlife Service*
- *U.S. Geological Survey*
- *U.S. Minerals Management Service*

U.S. Department of Transportation

The Department of Transportation houses the U.S. Coast Guard and the U.S. Maritime Administration. A branch of the armed forces, the U.S. Coast Guard (USCG) is the federal government's primary maritime law enforcement agency which operates as part of the U.S. Navy in times of war. In general, the USCG enforces federal laws and treaties of the United States on the high seas and in federal waters. The USCG's mission includes maritime law enforcement, national security, maritime safety and marine environmental protection.

The U.S. Maritime Administration (MARAD) administers federal programs aiding the development, promotion, and operation of the United States Merchant Marine. The MARAD has no direct ocean resource management responsibilities other than those imposed by the federal Clean Water Act and other laws regulating it as an owner of vessels in marine waters, such as those relating to oil spills and cleanup, and discharge of wastewater or hazardous materials. In addition, inasmuch as the MARAD has duties relating to contracts for the construction or conversion of vessels in the maritime fleet, it is responsible for ensuring that such contracts meet standards for ship construction, especially as relating to hazardous waste and oil.

U.S. Environmental Protection Agency

In 1970 the Environmental Protection Agency (USEPA) was established within the executive branch of the

federal government with two major functions: research and development, and abatement and control of pollution through a combination of research, monitoring, standard-setting, and enforcement activities.

The USEPA administers and enforces provisions of various statutes that apply to ocean management, including the federal Clean Water Act; Marine Protection, Research, and Sanctuaries Act; Coastal Zone Management Act (CZMA); and Federal Insecticide, Fungicide, and Rodenticide Act. For example, pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act, the USEPA is authorized to designate ocean sites for the dumping of wastes, including dredge spoils. The USEPA has developed five general criteria and eleven specific factors that must be considered in designating such disposal sites. As stated in the Army Corps of Engineers discussion above, the Corps is prohibited from issuing a dredge disposal permit if the USEPA finds that the proposal cannot meet its criteria for disposal site selection pursuant to Section 102 of the MPRSA.

In another example of USEPA ocean management authority, the 1990 amendments to the CZMA authorized establishment of a Coastal Nonpoint Source Pollution Program (16 U.S.C. 1455[b]) to reduce nonpoint sources of pollution in coastal waters. Both the National Oceanic and Atmospheric Administration and USEPA administer this program pursuant to the CZMA.

U.S. Food and Drug Administration

The Food and Drug Administration (FDA) is an agency of the U.S. Department of Health and Human Services. The FDA's primary responsibility is to administer the laws regulating the manufacture, branding, and use of drugs and commerce in foods, drugs, and cosmetics. Although the FDA has no direct ocean resource management responsibilities, it is responsible for the examination and inspection of seafood for shipment or sale, and the seizure of shellfish that are contaminated by harmful bacteria in the waters where they grow and that are deemed adulterated. Fish and shellfish contaminated by hazardous substance spills in ocean and coastal areas are administered as adulterated foods in an analogous manner.

CALIFORNIA STATUTES RELATING TO OCEAN MANAGEMENT

The Chair of the Assembly Select Committee on Marine Resources (Assemblymember Deirdre Alpert), in cooperation with the Resources Agency, requested the State Legislative Counsel's office to prepare a listing of California ocean management statutes to assist the Agency in developing this Agenda. The complete listing is included as Appendix E, a review of which leads to the following observation:

Multiple statutes and multiple codes. Provisions for regulating and managing ocean resources and waters are contained in a variety of statutes located in seven different California codes: the Fish and Game, Government, Harbors and Navigation, Health and Safety, Penal, Public Resources, and Water codes. Often a given issue may be addressed in several places within one code, while also being addressed in other codes. Statutes criss-cross various code sections to achieve appropriate single-issue purposes, but their development on an incremental basis has led to a body of law lacking cohesion. Unfortunately, this fragmented approach often results in confusion over agency roles and responsibilities, making it difficult for ocean users and government regulators to understand legal requirements relating to a specific issue.

Complications with the existing ocean management regime exist in part because State law may delegate agency authority by subject area, activity location, funding source, or land management responsibility. For instance, development of a State-funded recreational boating facility in State Tidelands offshore from a State Park would involve the Department of Parks and Recreation and State Lands Commission (land managers), Department of Fish and Game (wildlife protection), California Coastal Commission (impacts to the Coastal Zone), Regional Water Quality Control Board (water quality), and State Coastal Conservancy or Department of Boating and Waterways (funding). Not only must these agencies coordinate processes and procedures at the State level, but also with their counterparts at the federal and local levels.

One by-product of this complexity is the fact that many laws relating to ocean management are outdated and refer to processes that were completed years ago. These outdated provisions often go undiscovered for years because they get lost in the length and complexity of the existing codes relating to ocean planning and management.

FEDERAL STATUTES RELATING TO OCEAN MANAGEMENT

Assemblymember Bruce McPherson, in cooperation with the Resources Agency, requested the State Legislative Counsel's office to prepare a listing of federal ocean management statutes to assist the Agency in developing this Agenda. The complete listing is included as Appendix F, a review of which leads to the following observation:

Multiple statutes and multiple regulations. Provisions for regulating and managing ocean resources and waters are contained in a multitude of federal statutes and associated regulations. Some laws such as the Coastal Zone Management Act, were passed with the purpose of addressing multiple ocean and coastal management issues. Other laws have other principal purposes, but may affect ocean management through either a specific provision or set of provisions. An example of this is the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. 136 et seq.) which restricts the introduction of toxic chemicals into the environment, including both the inland and coastal waters. The statute includes provisions regulating the application of de-fouling chemicals to boat hulls, as well as provisions for the use of many other chemicals that can affect water quality. This law is just one of many identified that can substantially alter the health and sustainability of ocean resources, but may not be immediately associated within the context of ocean management.

The issue analyses in Chapter 5 describe how many of these statutes apply to ongoing ocean management concerns. Examples of federal statutes addressed in the issue analyses include the Coastal Zone Management Act; federal Water Pollution Control Act (Clean Water Act); Marine, Protection, Research and Sanctuaries Act; Oil Pollution Act; Outer Continental Shelf Lands Act; Endangered Species Act; Magnuson Fishery Conservation and Management Act; and Marine Mammal Protection Act.

COORDINATION OF JURISDICTIONS AND PROGRAMS

Ocean planning and management is inextricably linked to the need for accountability and coordination between all levels of government, the public, and the private sector. The ability for federal, state, and local governments to effectively coordinate management activities is a challenging task. However, this coordination is critical to efforts such as watershed management, oil spill prevention and response planning, offshore oil and gas development, port development, habitat restoration, and regulatory enforcement.

The prevalence of single-purpose laws and approaches to ocean resource management has resulted in multi-tiered planning, regulation, and enforcement. Various legal provisions reside within each of three levels of government, with each level often implementing this complex mix of provisions differently. Recent approaches to some ocean resource management issues, however, show promise for addressing substantial legal, policy, and scientific challenges in a more coordinated fashion. Four examples characterize some of these new approaches. The common theme is that ocean resource management must rely more on consensus-based approaches to solving problems. The terms and specific procedures for each example may differ, yet all focus on improving coordination to develop timely, complete, and lasting solutions to management concerns. The examples are:

- "integrated coastal management," a process which guides development of the Monterey Bay Water Quality Program. This process has provided a forum for up to 125 individuals representing a wide range of interests to express their concerns and provide their expertise in developing this program;

- joint review panels, which assist in preparing environmental documents for offshore oil and gas development proposals. These panels provide a forum for federal, state, and local government representatives to prepare, on a consensus basis, environmental documents which meet the requirements of the National Environmental Policy Act and the California Environmental Quality Act;

- the Governor's Wetlands Task Force, which coordinates state agencies to ensure consistent implementation of a statewide policy; and

- various regional task forces, which are improving the enforcement of coastal and ocean protection laws. These task forces develop cooperative agreements between federal, state, and local agencies to maximize the use of enforcement personnel with limited fiscal resources.

Monterey Bay National Marine Sanctuary Water Quality Program

The Water Quality Protection Program currently being developed in the Monterey Bay National Marine Sanctuary (MBNMS) is intended to identify water quality priority problems, identify pollution sources associated with such problems, and develop strategies for addressing the problems. The study area includes eleven watersheds and three large ocean segments. This process, begun in January 1994, is designed to evolve into an ongoing collaboration among federal, state, and local agencies, industry, academia, and the public to implement recommended strategies and address new problems as they arise.

The program is being developed using an approach known as "integrated coastal management," which involves all affected parties (stakeholders) in a systematic process to identify existing statutory authorities and programs, and use this information to develop a comprehensive approach to protect and improve water quality within the MBNMS. This regional approach to water quality maintenance and enhancement draws on the expertise and services of scientists, water quality specialists, government agency staff, and private organization representatives (over 125 people participated in a three-day workshop held in January 1994 to develop draft strategies). This water quality protection effort addresses the four resource zones identified as part of California's ocean ecosystem in Chapter 4 (the inland watershed zone, the enclosed waters zone, the nearshore ocean zone, and portions of the offshore ocean zone).

At least 34 federal, 46 State, and 34 local programs have been identified that relate to the development of a comprehensive water quality approach within this region. This information has been used to identify over 90 "strategies" that are being evaluated for use in maintaining or improving water quality along this segment of the California coastline. These strategies address five major categories: urban runoff, agricultural runoff, marinas and boating activities, point source pollution, and water management. For a strategy to be considered for implementation, it must contain, among other things, information on cost and financing, regulatory requirements, staffing and other resource requirements, and prerequisite activities.

Detailed strategies addressing urban runoff have been developed, and implementation is partly underway. These strategies focus on interagency coordination and include establishing a regional water quality management council, coordinating regional monitoring, and developing an interagency data access system. Other urban runoff strategies include regional stormwater management programs, technical training and education programs, sedimentation/erosion control measures, structural and non-structural controls, storm drain inspections, and CEQA revisions. As an example of the regional approach, the stormwater management strategy outlines steps to coordinating and building upon stormwater efforts currently conducted independently by area municipalities.

Looking Forward. The integrated coastal management approach used in developing the MBNMS Water Quality Protection Program could provide a model for maximizing the effectiveness of regional water quality protection and enhancement efforts. Integrating the many government programs and non-governmental approaches will help provide greater accountability, sharing of knowledge, and coordination between these efforts. It can also allow the use of existing or modified programs to achieve water quality objectives while reducing duplicative management efforts within the region.

Outer Continental Shelf Oil and Gas Production

Another way to demonstrate the multi-layer jurisdictions and associated complexities involved in ocean management is to identify the major agencies and their roles in the review of a proposal to locate an offshore oil and gas production facility on the OCS (a production platform, a pipeline to shore, and onshore processing facilities). The identified agencies have jurisdiction relating to the type, location or projected environmental impacts of a facility under review. The use of joint review panels made up of federal, state and local agencies has resulted in environmental impact reports/statements produced with the full participation of responsible agencies, in a timely manner, and with more complete and thorough analysis of all potential project impacts. The State of California has additional authority pursuant to the federal Coastal Zone Management Act to determine if projects on the federal OCS that affect State resources can be conducted consistent with California's Coastal Management Program.

Below is a list of the many agencies involved in reviewing an offshore oil and gas production facility:

Federal Agency Roles - OCS Oil and Gas Production

Minerals Management Service: leases the federal OCS as well as conducts environmental review, permit processes, and ongoing monitoring for specific proposals to explore for, or produce oil and gas resources.

National Marine Fisheries Service: protects marine species that could be affected by the development, including most marine mammals and salmon, and conducts a consultation with the applicant to determine if the development would threaten the continued existence of any protected species pursuant to the federal Endangered Species Act.

U.S. Army Corps of Engineers: requires permits to locate any surface structures in navigable waters.

U.S. Coast Guard: implements provisions of the Oil Pollution Act of 1990 and requires adequate provisions to prevent and respond to oil spills that could occur from these facilities.

U.S. Environmental Protection Agency: regulates operational discharge requirements under the Clean Water Act (usually concerning the dumping of drill muds and cuttings) and air quality impacts under the Clean Air Act.

U.S. Fish and Wildlife Service: protects certain species that could be affected by offshore oil and gas operations, such as Southern Sea Otters, and conducts a consultation with the applicant to determine if the development would threaten the continued existence of protected species pursuant to the federal Endangered Species Act.

State Agency Roles - OCS Oil and Gas Production

California Coastal Commission: conducts federal consistency review of federal permits or any federal activity that may "affect" the coastal zone, and issues Coastal Development Permits for activities in State Tidelands and within land portions of the Coastal Zone, if local governments have not assumed the land permitting role under the California Coastal Act.

Division of Oil and Gas (Department of Conservation): provides technical assistance to the Coastal Commission for federal consistency review of projects on the OCS and has direct regulatory authority over specified oil and gas operations in State Tidelands or onshore.

Department of Fish and Game: provides technical assistance to the Coastal Commission for federal consistency review of projects on the OCS and has direct jurisdiction for protecting and managing the State's wildlife resources that could be affected by proposed projects.

Office of Oil Spill Prevention and Response: provides technical assistance to the Coastal Commission for federal consistency review of projects on the OCS, works with the U.S. Coast Guard and other federal agencies to improve oil spill prevention and response in federal waters, and is responsible for the review and approval of oil spill prevention and contingency plans for marine facilities in California.

State Lands Commission: provides technical assistance to the Coastal Commission on federal consistency reviews for projects on the OCS, leases State Tidelands, administers lease agreements for oil and gas production activities on land, and, in the case of a production facility located in federal waters, would issue a right-of-way lease for any portion of the pipeline which crosses State Tidelands.

State Water Resources Control and Regional Water Quality Control Boards: provide technical assistance to the Coastal Commission on federal consistency reviews for projects on the OCS that include discharges into the water column, and administer the National Pollution Discharge Elimination System and Waste Discharge Requirements for discharges from facilities in State Tidelands.

Air Pollution Control and Air Quality Management Districts: administer approved state implementation plans for air emission discharges from onshore oil and gas facilities within their jurisdiction and from facilities on the OCS if delegated such authority by the U.S. Environmental Protection Agency.

Local Agency Roles - OCS Oil and Gas Production

Land Use and Environmental Quality Reviews: maintain regulatory authority over all onshore facilities used to support offshore oil and gas developments, including zoning, building permits, coastal development permits in areas with approved local coastal plans and all other applicable permits.

Looking Forward. Although future oil and gas leasing is currently prohibited in both State and federal waters, industry can still apply for permits to develop new offshore oil and gas facilities within existing leased areas. The time and cost required for the siting, construction, and beginning of drilling operations from an offshore production platform vary widely depending on the size of the facility, its location, the type of oil to be produced, and many other factors. The Minerals Management Service estimates that an application for constructing and operating a production platform takes a minimum of two years for approval.

Processing these applications in two years or less is difficult because each reviewing agency has different time lines and legal requirements. However, innovative processes can be developed to help address this problem. For instance, environmental impact statements/reports for offshore projects are now prepared under direction of joint review panels, consisting of federal, State, and local agencies that work together to develop the documents. Having each agency involved early in the process to assess and agree upon the potential environmental impacts of the project increases coordination and helps reduce the time necessary for agency review. This is just one example of available procedures for helping to facilitate ocean and coastal resource management decisions.

Regulatory Processes for Wetlands Protection

Coastal wetlands and subtidal habitats play an important role in maintaining California's ocean ecosystem. Generally, wetlands are lands where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface (Cowardin 1979). The number of wetland definitions contained in State and federal law for planning and regulatory purposes has expanded significantly over the years, leading to unnecessary confusion in protecting and managing wetland resources.

There appears to be a growing consensus that a single, legally accepted definition of wetlands would ensure more effective wetlands regulation. The following examples address the breadth and variability of the current State and federal wetlands definitions. Please note that the *following examples are only selected definitions contained in State and federal law* and should not be considered a definitive list.

State Definitions. In conjunction with adopting a wetlands policy on March 9, 1987, the California Fish and Game Commission assigned the Department of Fish and Game (DFG) the task of recommending a wetlands definition. The DFG found the U.S. Fish and Wildlife Service (USFWS) wetland definition and classification system to be the most biologically valid (see USFWS definition below). The DFG staff use this definition as a guide in identifying wetlands while conducting on-site inspections for implementing the Fish and Game Commission's wetlands policy.

Wetlands found in the "coastal zone" are regulated under the California Coastal Act of 1976 and the federal Coastal Zone Management Act (CZMA), and are within the jurisdiction of the California Coastal Commission (Coastal Commission). Under the Coastal Act, wetlands are defined as "land within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens" (PRC Section 30121).

This statutory definition has been expanded upon in the Coastal Commission's regulations as:

> "...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to vegetated wetland or deepwater habitats." (14 CCR 13577)

Wetlands in the San Francisco Bay, however, do not lie within the Coastal Commission's jurisdiction and are managed by another State agency, the San Francisco Bay Conservation and Development Commission (BCDC). The primary State law governing the BCDC, the McAteer-Petris Act, does not define wetlands, but does outline the BCDC's geographical jurisdiction respective to wetlands.

> "Managed wetlands consisting of all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature as a duck hunting preserve, game refuge or for agriculture. (Government Code Section 66610(b)).

While the above examples are either biological or regulatory in nature, other definitions in State law provide for the acquisition, enhancement, or preservation of wetlands. For instance, under the Keene-Nejedly California Wetlands Preservation Act, wetlands are defined as:

> "...streams, channels, lakes, reservoirs, bays, estuaries, lagoons, marshes, and the lands underlying and adjoining such waters, whether permanently or intermittently submerged to the extent that such waters and lands support and contain significant fish, wildlife,

recreational, aesthetic, or scientific purposes." (PRC Section 5812).

Lastly, under the California Wildlife Protection Act "wetlands" means lands which may be covered periodically or permanently with shallow water and which include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, fens, and vernal pools (Fish & Game Code Section 2785).

Federal Definitions. The fill of wetlands under federal law is governed primarily by the Clean Water Act. Regulations promulgated pursuant to the Act have defined this term as follows:

> "The term 'wetlands' means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." (33 CFR 328.3(b)). "Wetlands generally include swamps, marshes, bogs, and similar areas." (40 CFR 230.3(t)).

The Corps of Engineers has developed a wetlands delineation manual that uses a "three-parameter" test for purposes of implementing this regulatory definition. These three parameters are hydrophytic vegetation, hydric soils, and wetland hydrology. Under this definition, an area is considered a wetland only if all three conditions are present.

The U.S. Fish and Wildlife Service defines wetlands in a different manner:

> "Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year." (Cowardin 1979).

The USFWS definition includes swamps; freshwater, brackish water, and saltwater marshes; bogs; vernal pools; periodically inundated saltflats; intertidal mudflats; wet meadows and pastures; springs and seeps; and portions of lakes, ponds, rivers and streams.

Classification. Wetlands may be further defined through classification. In California, wetlands are commonly classified according to the length of time that an area is inundated or saturated by water, or the types of plants and animals an area supports. For example, if an area is only saturated or inundated for part of the year, it can be classified as a seasonal or perennial wetlands. Likewise, areas that are inundated or saturated throughout the entire year may be referred to as permanent wetlands.

Other classification systems exist however. Cowardin (1979) recognizes the following five major wetland classifications: marine, estuarine, lacustrine, riverine, and palustrine. Marine and estuarine wetlands are associated with the ocean and include coastal wetlands, such as tidal marshes. Lacustrine wetlands are associated with lakes, while riverine wetlands are found along rivers and streams. Palustrine wetlands may be isolated or connected wet areas and include marshes, swamps, and bogs. Although marine and estuarine wetland systems are most directly associated with the ocean, all these systems ultimately have an affect on the overall health of California's ocean ecosystem.

Looking Forward. Governor Pete Wilson acknowledged the confusion created by these multiple regulatory approaches in his *California Wetlands Conservation Policy* (August 1993) and promised that "the State will work toward the adoption of a consistent wetlands definition to address this situation. This definition will, to the greatest extent possible, be consistent with the definition and wetlands delineation manual used by the federal government. The definition will also recognize California's unique wetlands

types, and not apply to prior converted croplands currently exempt from federal regulation." The federal

government has issued a similar policy statement which calls for a consistent approach between federal agencies of jurisdiction.

The Governor's Interagency Wetlands Task Force created through an executive order (Executive Order W-59-93) includes the Resources Agency, CalEPA, the Business, Transportation and Housing Agency, the Governor' Office of Planning and Research, the Department of Fish and Game, the Department of Water Resources, and the State Water Resources Control Board, along with other cooperating agencies and the private sector. The Wetlands Task Force is currently addressing a wide range of issues surrounding the protection of California's wetland resources, including the development of a single definition. The Wetlands Task Force is a critical forum for addressing this issue because it includes all the key State agencies with jurisdiction over California's wetland resources. Developing a single definition, along with other strategies for implementing California's Wetland Conservation Policy, will afford the opportunity for important new advances in the way California protects its wetlands resources.

Ocean and Coastal Enforcement Mechanisms

Enforcing the many laws and regulations which address the protection and management of ocean and coastal resources is difficult for a number of reasons. First, the numerous, overlapping, and in some cases inconsistent mandates and agencies of jurisdiction have created confusion for those who must comply with, or enforce, these provisions. The result is a need for increased education of all parties, combined with the long-term goal of simplifying these mandates without compromising environmental standards.

Another factor making enforcement difficult has been the historic lack of legal deterrents. For many years the Coastal Commission did not have the authority to issue cease and desist orders for Coastal Act violations, and the fines for such violations were inadequate to provide a tangible deterrent. To address this issue, Governor Wilson signed legislation in 1991 providing cease and desist authority to the Coastal Commission and tripling the dollar amount of fines that could be imposed. Although some feared abuse of this authority, the Coastal Commission has issued only nine orders along the entire 1,100 miles of California coastline between May 1992 and December 1995. More importantly, the instances of reported violations have decreased statewide over the same period. (Kern, pers. comm.).

Another major difficulty is that most agencies lack the personnel to provide the field presence necessary for adequate enforcement. In practical terms, this field presence fulfills several purposes including education, a visible deterrence, and the ability to initiate enforcement actions when necessary. Enforcement actions require differing levels of response because some may need immediate attention (such as a fishery violation or oil spill), while others may involve a longer investigation for action (such as a non-emergency development violation).

In the face of these difficulties and declining budgets, federal, State, and local governments are seeking new methods to maximize the efficiency and effectiveness of enforcement activities. Through enhanced cooperation and coordination, diverse entities can work together to advance their mutual interests more effectively than any single entity could do alone.

Santa Monica Mountains Enforcement Task Force. In the Santa Monica Mountains/Malibu Canyons, twenty-six governmental entities have regulatory authority over development activities such as construction, demolition, grading, vegetation removal, streambed alteration, and installation of shoreline protective structures. Other regulatory responsibilities involve water quality, wildlife management, wildfire control, insect control, weed abatement, recreation management, and other issues concerning public health and safety. For many years, there have been a disproportionate number of Coastal Act violations reported in this area.

The Santa Monica Mountains Enforcement Task Force (SMME Task Force) was formed in January 1990 to bring the various local and State agencies together to better protect the natural resources, coordinate

enforcement activities, and reduce the amount of illegal development activity occurring in the Santa Monica Mountains. Co-chaired by the Coastal Commission, Regional Water Quality Control Board, National Park Service, and Santa Monica Mountains National Recreation Area, the SMME Task Force links agencies that regulate development activities and manage wildlife with law enforcement and litigation agencies and field personnel. The SMME Task Force produces citizen guides for obtaining permits in the region and for reporting violations. It meets monthly to discuss the status of existing cases, review new cases, and establish a network of information to improve the prevention, investigation, and prosecution of violations.

Since the SMME Task Force and other legislative measures were initiated, reported violations in the region dropped from an average of five per week in 1990 to an average of less than two per week in 1995 (Kern, pers. comm.). The SMME Task Force has also helped resolve conflicts between various agencies in the region. For instance, the SMME Task Force helped facilitate a resolution regarding local fire department requirements for weed abatement and vegetation clearance which were in conflict with Coastal Act requirements for habitat protection. The resolution led to the preparation of consistent fire clearance conditions for local fire departments and the California Coastal Commission which meet fire suppression and watershed management goals. Using the Santa Monica Mountains effort as a successful example, the Coastal Commission is in the early stages of forming a new organization to assist with enforcement issues in Humboldt County.

Emerging Approaches. New collaborative approaches to enforcement are being attempted in other areas along the coast using many of the concepts developed for the protection of the Santa Monica Mountains watershed. Currently a task force of the Monterey Bay National Marine Sanctuary Advisory Council has begun efforts to develop a Memorandum of Understanding between enforcement agencies in the region. Unlike the Santa Monica Mountains Task Force, the Monterey effort is being initiated with a greater focus on offshore enforcement. The idea is to combine the efforts of several federal, State and local agencies, as well as citizen-led efforts to help coordinate public education and enforcement responsibilities in the region.

In San Francisco Bay, the Bay Conservation and Development Commission's Executive Director has convened a series of meetings to create a Bay Environmental Law Enforcement Task Force (Bay Force). As proposed, Bay Force would include the chief enforcement officers at the BCDC, San Francisco Bay Regional Water Quality Control Board, DFG's Region 3, U.S. Army Corps of Engineers' San Francisco District, U.S. EPA's Region IX, and representatives from the U.S. Department of Justice and California Department of Justice.

Other Tools for Education and Enforcement. Citizen groups have organized in many coastal areas to keep watch for violations of environmental laws. In San Francisco Bay, Bay Keeper conducts observations both on the water and along the shoreline using a small staff and volunteers. The group has identified and referred to regulatory officials a substantial number of violations within the bay over the years. The Gulf of the Farallones National Marine Sanctuary has established the Beach Watch program which selects and trains volunteers to help develop baseline information, create long-term data sets for a particular beach, detect natural or human events (including violations of Sanctuary regulations), develop networks of local experts, and educate the public about the coastal environment and how they can get involved. In the Monterey Bay Area, Bay Net has been formed as an outreach program with a focus on enhancing public awareness and understanding of the Monterey Bay National Marine Sanctuary. The program stations trained citizen volunteers at selected locations within the MBNMS where they provide local residents and visitors with basic interpretation about ocean and coastal resource stewardship. All the volunteers receive training in the basic marine protection laws and are available to notify officials in the event of witnessing illegal activity. Other groups, such as the Surfrider Foundation, keep an eye out for violations along the entire California coast.

Looking Forward. Additional cooperative enforcement measures will be necessary to more fully protect California's ocean ecosystem. In some cases, additional funds will be necessary to fill in gaps in

enforcement capability. However, the use of task forces and other cooperative forums can provide a common sense and cost-effective approach to educating the public and helping federal, State, and local officials enforce the laws that protect California's ocean and coastal resources.

CONCLUSION

The first step toward understanding the full range of law, jurisdiction, and ownership related to California's ocean ecosystem, and the agencies charged with stewardship and governance of this region, has been provided in this discussion. A complex mix of single-purpose federal, State, and local ocean management statutes, and the agencies charged with implementing these laws, has led to a process that is sometimes duplicative, difficult to understand, and challenging to coordinate. This complexity is increased by the pattern of ownership and regulatory jurisdiction of offshore waters by State, federal, or international entities. With the exception of the provisions in California's Coastal Management Program, most ocean planning, coordination, and research efforts continue to be pursued on a single-purpose basis. This analysis points to the need for a more comprehensive approach to planning and decision-making, and for new procedures to help reduce confusion, delay, or duplication in matters relating to ocean resource management.

The four examples provided in this discussion identify some practical issues surrounding the difficulties of implementing and enforcing the complex laws which govern the management of California's ocean ecosystem. The theme that emerges is that timely, complete, and lasting solutions to ocean resource management concerns will benefit from increased coordination. This coordination must first begin at the local level, whenever possible. If, however, an issue requires statewide assistance, a process should be available to elevate the issue to the highest levels of State government for timely and effective resolution. A recommendation in Chapter 6 to establish a California Ocean Resources Management Coordinating Council is intended to provide a forum to coordinate resolution of the most pressing statewide management concerns.